IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2499 OF 2004

WITH

CRL.W.PS.NOS. 2500 & 2501 OF 2004

Bharat Tukaram Redkar, etc. ... Petitioners

versus

The State of Maharashtra,etc. ... Respondents

...

Mr.A.S. Khandeparkar, for the Petitioners.

Mr.K.V. Saste, A.P.P., for the Respondents.

...

CORAM : A.M.KHANWILKAR,J.

6th April 2005

P.C.:

1. Heard Counsel for the parties. These petitions take exception to the order dated July 13, 2004 passed by the Sessions Court rejecting the revision applications preferred by the Petitioners in the respective petition, essentially on the reasoning that it was not open

to the Chief Judicial Magistrate to entertain the application for discharge at the instance of the Petitioners, having regard to the fact that the trial was transferred before the Chief Judicial Magistrate by the Special Judge in exercise of powers under section 228 of the Code of Criminal Procedure.

2. To that extent, the observations made by the Sessions Court in the impugned order is correct. I see no reason to depart from the view so expressed by the Sessions Court.

3. The Petitioner(s) in the respective petition were arraigned as accused in respective CRs. for offences under section 5(1)(c) and (d) read with section 5(2) and section 13(1)(c) and (d) read with section 13(2) of the Prevention of Corruption Act, read with sections 120B, 420, 468, 471, 109 read with section 34 of the Indian Penal Code.

4. As the Petitioner were named as accused in the offence under the Prevention of Corruption Act, the case could obviously be tried only by

the Special Judge under the said Act. Alongwith the offence under the Prevention of Corruption Act, the Special Judge was competent to try the Petitioners for offences under the Indian Penal Code by virtue of section 4(3) of the Act of 1988. In the present case, however, when the evidence collected by the investigating agency was placed before the Special Judge to consider the same for framing of charge, the Special Judge by his order dated 21st April 1998 observed that the material was not sufficient to frame charge under section 5(1)(c) and (d) read with section 5(2) and section 13(1)(c) and (d) read with section 13(2) of the Prevention of Corruption Act. However, in the same order in para 4, it is clearly stated that the materials on record would cover the offences punishable under sections 120B, 420, 468, 471, 109 read with section 34 of the Indian Penal Code. That, indeed, is a prima facie opinion recorded by the Special Judge as was required for framing of charges for these offences. Be that as it may, the operative order passed by the Special Judge dated 21st April 1998, obviously takes the colour from the power bestowed on the Special Judge in terms of section

228(1)(a) of the Code. For, the Special Judge, after expressing his prima facie opinion about the availability of material to proceed against the Petitioners for offences under the Indian Penal Code, transferred the case to the file of the Chief Judicial Magistrate, Sindhudurg at Oros, to proceed against the Petitioners in accordance with law; which is required to be passed in terms of section 228(1)(a) of the Code in such a fact situation. In my opinion, merely because the formal charges were not framed by the Special Judge, that would not mean that the said order passed by the Special Judge is any other order than the one passed under section 228(1)(a) of the Code. If it is so, the Petitioners who were named as accused could not have filed application for discharge before the Chief Judicial Magistrate, where the trial stood transferred in terms of such order of the Special Judge and Additional Sessions Judge, Sindhudurg, dated 21st April 1998. It is on that basis the revisional Court has observed that the Chief Judicial Magistrate could not have entertained the application for discharge at the instance of the Petitioners at all. No fault can be found

with that opinion recorded in the impugned decision in this behalf. If that view is correct, then it is clear that it was not open for the Chief Judicial Magistrate to entertain the discharge application, and as a consequence thereof, the revision application filed before the Sessions Court was also unavailable. Viewed in this perspective, no fault can be found with the Sessions Court for having rejected the Revision Application of the Petitioners on that count.

5. Before this Court, the Petitioners have confined their challenge only to the issue that the Sessions Court has committed error in dismissing their revision as not maintainable. There is no challenge to the prima facie opinion recorded by the Special Judge in his order dated 21st April 1998, observing that material placed before him would cover the offences punishable under sections 120B, 420, 409, 468, 471 read with section 34 of the Indian Penal Code. Whether such challenge would be permissible at this distance of time (i.e. after lapse of seven years) need not detain this Court. If it is so,

no other contention requires to be examined by this Court. Accordingly, there is no substance in these petitions. The same should fail.

6. Mr. Khandeparkar, however, placed reliance on the order passed by this Court dated October 28, 2004, in Criminal Writ Petition No. 1635 of 2004, requiring the revision application filed by the co-accused to be considered by the revisional Court. This submission, however, clearly overlooks that the background in which the matter was brought before this Court was not brought to the notice of this Court when the said order was passed. Inasmuch as, the only question that was argued before this Court at the time of arguments was that the case of accused No. 2 was not analysed by the Court below at all while considering his discharge application alongwith similar application filed by other accused in the same case. Only that contention was considered and it was observed that the revision application of the Accused No.2 be considered on its own merits in accordance with law. That does not mean that if the revision was not maintainable,

as observed earlier, the revisional Court would proceed to decide the case on merits. Instead, the Sessions Court would be justified in rejecting the remanded revision application of accused No.2 following its earlier decision which is impugned in these petitions. Accordingly, order passed by this Court on October 28, 2004 will be of no avail to the Petitioners.

7. Reliance was also placed on the decision of Rajasthan High Court reported in 1975 Cri.L.J. 978 in the case of Zahoor Ahmad v. State of Rajasthan. That decision is of no avail to the Petitioners. In that case, the Special Judge even after having noticed that no offence under the provisions of the Prevention of Corruption Act was made out decided to take cognisance of offence under Indian Penal Code only and intended to proceed with the trial. In that backdrop, it was held that the Special Judge had no jurisdiction to take cognisance of the offence under section 408 Indian Penal Code. In the present case, however, the Special Judge has rightly exercised the power under section 228(1)(a) of the Code in transferring the case to

the file of the Chief Judicial Magistrate.

8. Acordingly, for the reasons already recorded hereinabove, I see no basis to entertain these petitions. All the three petitions are, therefore, dismissed.

(A.M.KHANWILKAR,J.)